

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Civil Action No. 3:17-cv-00266-RJC-DSC**

**JEFFREY PODESTA and STREET
SEARCH, LLC,**

Plaintiffs,

v.

**JOHN F. HANZEL, ESQUIRE, JOHN F.
HANZEL, P.A. ATTORNEYS AT LAW,
JOHN P. SCAFIDI, HONEYWOOD
ENERGY, LLC (formerly known as
Blackwood Energy, LLC), JAYSON
COLAVALLA, TONY C. SCOTT, SAMUEL
V. WATKINS, a/k/a WATKINS V.
SAMUEL, TALC PROPERTIES FL, LLC,
and TALC PROPERTIES VENTURES,
LLC,**

Defendants.

**DEFENDANT JAYSON
COLAVALLA’S MOTION TO
DISMISS FOR INSUFFICIENT
SERVICE OF PROCESS AND
FAILURE TO STATE A CLAIM**

Pursuant to Fed. R. Civ. P. 12(b)(5) and 12(b)(6), Defendant Jayson Colavalla (“Colavalla”) respectfully moves the Court to dismiss this action as against him for insufficient service of process and failure to state a claim upon which relief may be granted. In support of this motion, Colavalla shows the Court as follows:

1. On May 18, 2017, Plaintiffs filed a Complaint asserting various contract, tort and statutory claims against Colavalla arising from Plaintiffs’ failed attempt to partner with Defendants John Scafidi (“Scafidi”) and John Hanzel (“Hanzel”) to provide a down payment for the purchase of a coal mine in Pennsylvania. [Doc. 1].

2. On May 22, 2017, Plaintiffs caused the Clerk of Court to issue a Summons directed to Colavalla at the following address: 3108 Asheton Grove Court, Winston Salem, North Carolina 27127. [Doc. 2-3].

3. On June 19, 2017, Plaintiffs caused the Clerk of Court to issue a new Summons directed to Colavalla at the following address: 20324 Carrington Trace Drive, Cornelius, NC 28031 (the “Cornelius address”). [Doc. 3].

4. On August 9, 2017, Plaintiffs’ counsel, Michael G. Gibson, filed an Affidavit of Service asserting that he served Colavalla with process “by mailing a copy of the Summons and Complaint by certified mail, return receipt requested,” to the Cornelius address, and that Colavalla received such process on July 29, 2017, “as evidenced by the attached return receipts.” [Doc. 8].

5. No return receipts are attached to the Affidavit of Service.

6. Colavalla does not live at the Cornelius address, has never lived there, and was not served with process there on July 29, 2017, or any other date. See Declaration of Jayson Colavalla, ¶¶ 3-5. [Doc. 12]. Colavalla’s only connection to the Cornelius address is that he received mail there for a brief period of time in 2016 while traveling for work. [Doc. 12 at ¶ 4].

7. Alternatively, the Complaint fails to state any valid claims against Colavalla.

8. The primary thrust of Plaintiffs’ Complaint is that Hanzel breached an escrow agreement with Street Search by improperly transferring \$300,000 of Street Search’s money, which was supposed to be used as a down payment for the purchase of the Pennsylvania coal mine, to a bank in London. See, generally, [Doc. 1].

9. Colavalla is not a party to any of the agreements alleged in, or attached to, Plaintiffs’ Complaint. Plaintiffs do not allege that they ever spoke to Colavalla, orally or in

writing, in relation to the matters described in the Complaint, or that Colavalla ever made representations to them. Rather, Plaintiffs improperly lump Colavalla in with the other defendants in a classic effort to prove Colavalla's "guilt by association."

10. As set forth in Colavalla's Memorandum of Law in support of this Motion, filed simultaneously herewith, Plaintiffs have not pled any facially plausible claims against Colavalla, most of which are also time-barred by applicable statutes of limitations. All claims against Colavalla should therefore be dismissed.

WHEREFORE, pursuant to Fed. R. Civ. P. 12(b)(5) and 12(b)(6), Defendant Jayson Colavalla respectfully requests that the Court dismiss all claims against him for insufficient service of process and failure to state a claim upon which relief may be granted.

Respectfully submitted, this 21st day of August, 2017.

s/ Jon P. Carroll

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing **DEFENDANT JAYSON COLAVALLA'S MOTION TO DISMISS FOR INSUFFICIENT SERVICE OF PROCESS AND FAILURE TO STATE A CLAIM** has this date been electronically filed with the Clerk of Court using the CM/ECF system, and has been served on all parties via first class mail, sufficient postage prepaid, and addressed as follows:

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This 21st day of August, 2017.

s/ Jon P. Carroll

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